

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Education Committee

BILL: SB 434

INTRODUCER: Senator Bennett

SUBJECT: Sales Tax/K-12 School

DATE: March 7, 2006

REVISED: 3/14/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Matthews	ED	Fav/1 amendment
2.			GO	
3.			GE	
4.			WM	
5.				
6.				

Please see last section for Summary of Amendments

- Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

This bill provides a tax exemption for tangible personal property sold to a government contractor when the property will become part of a public K-12 school owned by the government entity.

Certain conditions are required to be met to receive the exemption for materials used in school construction, including that the governmental entity hold a certificate of exemption, certain documentation is provided to the seller, and that the seller and the contractor maintain specified records.

This bill substantially amends section 212.08 of the Florida Statutes.

II. Present Situation:

Chapter 212, F.S., addresses tax on sales, use, and other transactions. Section 212.02, F.S., defines the following terms:

- Sale – A transfer of title, possession, or both, exchange, barter, license, lease, or rental of tangible personal property in exchange for something of value.¹

¹ s. 212.02(15), F.S.

- Tangible personal property includes property that can be seen, weighed, measured, or touched, or is any way able to be perceived by the senses, including electric power or energy, boats, certain motor vehicles and mobile homes, aircrafts, and all other types of vehicles.²

Section 212.08, F.S., provides various tax exemptions for the sale, rental, use, consumption, distribution, and storage, for the following categories:

- Food for human consumption, unless the food is prepared and sold as a meal for immediate consumption, or is a soft drink;
- Medical products or supplies, or medicine dispensed by prescription, hypodermic needles, common household medical remedies, not including cosmetic items;
- Certain farm equipment;
- Items subject to other excise taxes, such as fuels used by a public or private entity;
- Account of use, including certain items used in agriculture and commercial fishing, certain industrial machinery and motion picture or video equipment, business property used in an enterprise zone; materials for construction of single-family homes in redevelopment zones, and other building materials in redevelopment projects, provided that the materials become a component part of the project;
- Sales made to the U.S. Government, a state, or any county, municipality, or political subdivision, except for sales of tangible personal property made to contractors employed either directly or as agents of a government entity when the tangible personal property becomes a part of the public works owned by the governmental entity;
- Miscellaneous exemptions, including boiler fuels used for industrial purposes, sales of the U.S. and state flag, and guide dogs for the blind;
- Partial exemptions for vessel, railroad, or commercial transport motor vehicles based on a ratio of intrastate to interstate or foreign mileage traveled by the carrier;
- Partial exemptions provided for flyable aircraft and master recording equipment;
- Sales related to space activities; and
- Sale or use by a government contractor of overhead materials.

III. Effect of Proposed Changes:

This bill changes current law, which specifically excludes tax exemptions for materials incorporated into public structures, to provide a tax exemption for sales of tangible personal property made to contractors employed either directly, or as agents of the U.S. government, a state, county, municipality, or political subdivision of a state for public K-12 school construction.

This exemption is subject to the following conditions:

- At the time of sale, the governmental entity or political subdivision (“entity”) has a current consumer’s certificate of exemption from the Department of Revenue;
- The tangible personal property purchased by the contractor will go into or become part of a public K-12 school;

² s. 212.02(19), F.S.

- The entity is financially responsible for the cost of the tangible personal property;
- The entity, general contractor, or subcontractor presents to the seller prior to or at the time of purchase certain statements, along with a certificate of exemption;
- The seller's records contain certain documentation, including a detailed purchase order and confirmation of the bill's requirements;
- The seller verifies information regarding the purchase and construction project, and maintains certain records; and
- The contractor maintains certain records, and accrues and remits use tax on items purchased as exempt but not used in the public K-12 school construction.

The bill does not extend to consumable supplies used by the contractor that do not become part of the permanent structure.

This bill provides a penalty for fraudulent use of the exemption, consisting of the following:

- The tax payment that would have been due on the materials;
- An additional 200 percent of tax owed; and
- A third degree felony, punishable by up to five years imprisonment and \$5,000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18 of Article VII of the State Constitution provides:

Laws requiring counties or municipalities to spend funds or limiting their ability to raise revenue or receive state tax revenue.--

- (a) No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds....

If the impact of such a law is to reduce the percentage of a state tax shared with counties and municipalities in the aggregate above February 1, 1989 levels, the constitutional provision requires the Legislature to make a determination that the law fulfills an important state interest, and the bill must pass by a two-thirds vote of both houses of the Legislature.

For purposes of the mandate analysis, an exemption to the required criteria exists where the fiscal impact is determined to be insignificant. The term "insignificant" is defined as an amount not greater than the average statewide population for the applicable fiscal year multiplied by \$.10. The current population in Florida is estimated to be about 18 million. Therefore, an insignificant fiscal impact is considered to be in the aggregate of \$1.8 million or less.

Provided that current estimates are expected to be at least as much as that arrived at in 2005, as the \$2.2 million local option estimated is higher than \$1.8 million, a significant impact would result, thereby triggering the requirements for an important state interest declaration and two-thirds legislative approval. (See V. Economic Impact and Fiscal Note section)

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Revenue Estimating Conference reviewed SB 2290 in 2005, which provided the identical sales tax exemption to that provided in this bill. The conference adopted the following estimates of an impact on revenue:

- Total Statewide Impact: \$30.2 million
- Local Option: \$2.2 million

Estimates of the impact of this bill for this year have not yet been completed.

B. Private Sector Impact:

To the extent that a private seller is required to verify and maintain records of certain information involved in the sale, an insignificant fiscal impact is expected.

C. Government Sector Impact:

Governmental entities purchasing tangible personal property for public K-12 school construction, when the property becomes part of the permanent facility, will receive a tax exemption for those materials.

The Department of Revenue indicates that it must create new forms and change internal processes, and revise its current rule on public works contracts, at a total cost of about \$17,900. The department considers this amount fiscally insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

Barcode 833962 by Education:

Revises effective date to January 1, 2007.

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